

### **REMARKS**

Claims 6 and 19-20 are currently pending in the application. By this amendment, claims 11-16 and 18 have been cancelled, and new claims 19-20 have been added. Claim 17 was withdrawn due to a previous restriction requirement. However, Applicant notes that Claim 17, which is dependent on allowable claim 6 (see below) and should also be allowable. Withdrawn claims 7-10 comprise, together with linking claim 6, inventions I-IV as delineated by Examiner in the Election/Restriction requirement of 10/28/2002 (Invention I = claims 6 and 7; Invention II = claims 6 and 8; Invention III = claims 6 and 9; Invention IV = claim 6 and 10. Applicant submits that since claim 6 is allowable, claims 7-10 should now be entitled to examination and allowance in the instant application.

The foregoing separate sheets marked as "Listing of Claims" shows all the claims in the application, with an indication of the current status of each.

#### **Claim Rejections: 35 USC § 112(a)**

Claims 12-16 stand rejected under 35 USC §112, first paragraph. Claims 12-16 have hereby been cancelled, thereby making moot this portion of the rejection.

#### **Claim rejections: 35 USC § 102(b)**

Claim 6 stands rejected under 35 USC § 102(b) as anticipated by Boyer et al. (*Virology* 263, 307-312; 1999).

The entire text of the "Results and Discussion" of Boyer et al. is included *verbatim* in the present application in the section entitled "Experimental Details: SECOND SERIES", beginning on page 74 at line 9, and ending on page 89. The entire text of the "Results and Discussion" of Boyer et al. was included *verbatim* in United States provisional patent application 60/218,498 (filed July 14, 2000, to which the present application claims priority) in the section entitled "Second Set of Experiments" beginning on page 69 at line 10 and ending on page 85. Boyer et al. is co-authored by Boyer, Rohleder and Ketner. Of these, Boyer and Ketner are inventors of the present application. Applicant herewith submits a Declaration executed by Rohleder stating that he has reviewed the present application, including the claims, and that he is not a co-inventor of the claimed technology. In fact, Rohleder was working as a student in the lab of Dr. Ketner at the

time. Thus, the inventive entities of the present application are Ketner and Boyer, and Boyer et al., is not a valid anticipatory reference against the claims of the present application.

In view of the foregoing, Applicant respectfully requests reconsideration and allowance of claim 6 of the application.

**Other matters.** New claims 19 and 20, both of which are dependent on claim 6, have been added to the specification. New claim 19 recites that the E1B region of genomic adenoviral DNA that is introduced into the cell encodes and expresses only E1B 55kDa protein. Similarly, new claim

20 recites that the gene products of said E1B region that are expressed in the cell include only the E1B 55kDa protein.

Support for these new claims is found in the specification at page 42, lines 19-25, which state that the E1B 495R 55 kDa protein may be used alone in the practice of the present invention. Applicant submits that new claims 19 and 20 therefore do not introduce any new matter into the application, and respectfully requests examination and allowance of these two new claims.

In addition, claim 6 has hereby been amended with respect to formal matters by eliminating "the" before "gene products" ("gene products" was not recited previously in the claim) and by inserting "an" before "E1B region" in order to comply with more standard English. Applicant submits that these amendments, being entirely formal in nature, do not add any new matter to the application, and respectfully requests entry of the amendments.

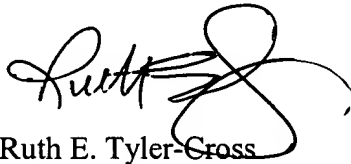
### **Conclusions**

In view of the foregoing, it is requested that the application be reconsidered, that claims 6 and 19-20 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at 703-787-9400 (fax: 703-787-7557; email: ruth@wcc-ip.com) to discuss any other changes deemed necessary in a telephonic or personal interview.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ruth E. Tyler-Cross', with a large, stylized flourish at the end.

Ruth E. Tyler-Cross  
Reg. No. 45,922

Whitham, Curtis & Christofferson, P.C.  
11491 Sunset Hills Road, Suite 340  
Reston, VA 20190  
703-787-9400  
703-787-7557 (fax)